

**COMPLAINT INVESTIGATION SUMMARY**

<b>COMPLAINT NUMBER:</b>	<b>1835.02</b>
<b>COMPLAINT INVESTIGATOR:</b>	<b>Sandra Scudder</b>
<b>DATE OF COMPLAINT:</b>	<b>November 26, 2001</b>
<b>DATE OF REPORT:</b>	<b>January 15, 2002</b>
<b>REQUEST FOR RECONSIDERATION:</b>	<b>yes/Revised March 15, 2002</b>
<b>DATE OF CLOSURE:</b>	<b>June 12, 2002</b>

**COMPLAINT ISSUES:**

Whether the Richmond Community Schools violated:

- 511 IAC 7-27-7(b) and 511 IAC 7-17-72 by failing to ensure that the student's teacher of record (TOR):
  - a. informed the student's teachers of his or her specific responsibilities relating to implementing the student's individualized education program (IEP); and
  - b. ensured that supplementary aides and services, program modifications, and supports for school personnel are provided in accordance with the student's IEP.
- 511 IAC 7-23-1(f) by failing to permit the parent to inspect and review the student's educational record after the parent requested such review.
- 511 IAC 7-27-7(a) by failing to implement the student's IEP as written, specifically:
  - a. failing to provide required equipment;
  - b. failing to implement the VI program;
  - c. failing to provide VI materials and adaptations;
  - d. failing to provide a paraprofessional;
  - e. failing to permit the student to have recess with nondisabled peers; and
  - f. failing to provide 60 minutes of occupational therapy per week.
- 511 IAC 7-27-4(a)(3) by failing to convene a case conference committee upon the parent's request.
- 511 IAC 7-27-5(a)(4) and (c) by failing to provide the parent with a copy of the student's IEP within ten business days of the date of the case conference committee meeting.
- 511 IAC 7-21-2(c) by failing to provide the paraprofessional with preservice or inservice training on the skills needed to carry out assigned responsibilities and the specific needs of the student with whom the paraprofessional works.
- 511 IAC 7-27-5(a) by imposing a deadline for the parent to submit a written opinion and failing to include the parent's written opinion unless the parent submitted the opinion within five days of receiving the case conference committee report.
- 511 IAC 7-27-2(c) and 511 IAC 7-17-3 by failing to provide the parent with adequate notice of case conference committee meetings.

- 511 IAC 7-27-4(c) by presenting a unilaterally prepared final IEP at the case conference committee meeting and not utilizing the case conference committee to develop the student's IEP.
- 511 IAC 7-18-2 and 511 IAC 7-17-36 by failing to provide a free appropriate public education to a student with a disability at no cost to the parent, specifically:
  - a. failing to compensate the parent for her services as the student's paraprofessional until the school could employ a paraprofessional; and
  - b. requesting a report on the student's vision deficits and requiring the parent to obtain the report at her expense.
- 511 IAC 7-27-9(b) by failing to make available to a student with a disability the variety of nonacademic activities made available to nondisabled students, specifically, failing to make playground equipment accessible to a student with a disability.
- 28 CFR 35.150(a) by failing to provide a student with a disability with appropriate parking to permit access to the school building.

On December 19, 2001, the state director of the division of special education extended the original deadline for this report from December 26, 2001, to January 14, 2002, to allow sufficient time to investigate and complete the report. Due to the extensive nature of the complaint as well as the requests for reconsideration, the state director of the division of special education extended the original deadline for the completion of the reconsideration report from February 15, 2002, to March 15, 2002.

## **FINDINGS OF FACT:**

1. The student (Student) is 7 years old, is in the 1<sup>st</sup> grade, and is eligible for special education and related services as a student with an orthopedic impairment, a visual impairment, and a communication disorder.
2. The Complainant alleges the TOR has not provided the Student's classroom teacher with supplementary aids and supports or informed the classroom teacher of specific responsibilities in implementing the Student's IEP. The IEP dated August 14, 2001, lists a variety of accommodations and modifications to be provided to the Student. Section 13 of the IEP states that personnel will need special training and support in the areas of lifting and positioning the Student, as well as information pertaining to assistive technology and visual needs. On August 19, 2001, the TOR sent a copy of the Student's IEP, including the list of accommodations and modifications, to the Student's classroom teacher. The TOR's correspondence to the classroom teacher indicates the TOR's availability to address any questions or concerns regarding the provision of services to the Student. Between August 19 and September 21, 2001, the TOR talked with the classroom teacher about modifications for the Student's homework, and indicated that she continued to be available to discuss issues regarding implementation of the Student's IEP. The classroom teacher reports that the TOR has been a "great resource" in her ability to implement the Student's IEP.
3. The Complainant requested a copy of the Student's complete educational record file in a meeting with the school attorney and director of special education on September 11, 2001, via an e-mail request on October 23, 2001, and again in a letter to the principal and assistant director of special education dated November 9, 2001. The principal stated in a letter to the Complainant dated September 17, 2001, that a copy of the student's school file was enclosed, including copies of "various e-mails and other communications." The principal also advised that the copy of the educational record provided did not include copies of the document the Complainant had previously provided to the school. In a letter dated October 23, 2001, the principal informed the Complainant that she could review the Student's educational records at any time and

advised that the right to review an educational record did not extend to “personal correspondence, notes and etc.”

4. The IEP dated August 14, 2001, requires the Student to be provided with positioning and mobility equipment. The Complainant had the equipment (floor sitter, bronco walker, stander, and adapted toilet seat) from the Student's previous school shipped to Indiana. On August 31, 2001, the Complainant was informed that the School had purchased this equipment from the school the student previously attended. Despite the School's purchase of this equipment, the Complainant removed the floor sitter and the bronco walker from school, but left the toilet seat adaptor; the Complainant never took the stander to the school. In a letter to the School, dated October 3, 2001, the Complainant stated the equipment would be returned to School after the School reimbursed her for expenses incurred transporting the equipment from out of state to the Student's home. The School has not had access to this equipment at school since the Complainant removed it, however the school provided alternative positioning and mobility equipment for the student.
5. The IEP, dated August 14, 2001 states that the VI teacher/TOR is to provide the student with 30 minutes of direct services per week. The August 2001 to December 2001 service delivery report from the VI teacher who also serves as the Student's TOR acknowledges the 30 minutes of direct services per week. August 15, 2001, is the initiation of service date identified in the IEP. According to a service delivery journal, consultation/team meetings started on August 17, 2001, and the VI teacher began providing direct services to the Student on August 28, 2001.
6. The complainant asserts that the VI teacher did not provide adapted materials to address the Student's vision impairment, so the Complainant supplied materials until the school could acquire their own. The IEP dated August 14, 2001, requires several adapted materials, including; slant board, easel, adapted pencils, adapted scissors, and adaptive feeding utensils. The parent provided these items for the school, until she removed them on August 31, 2001. The Student did not attend school from August 30, 2001 through September 11, 2001. The school ordered these specific items on September 12, 2001 upon the Student's return to school. Prior to receiving the ordered items, the school utilized other available adapted materials for the Student. In a letter dated October 8, 2001, the TOR informed the Complainant that, with the exception of the easel, which had been backordered and was delivered several weeks later, the ordered materials were available for the Student's use. On January 11, the principal stated that not all materials were ordered prior to the Student's arrival pending assurance of the Student's move, and that all materials are now available for the Student's use.
7. The August 14 IEP does not require a one to one paraprofessional to assist the Student, although the IEP lists the paraprofessional as one of the responsible parties in implementing the identified goals and objectives. A paraprofessional for the classroom was hired prior to the beginning of the 2001-2002 school, but resigned the day before school started. As a result of the loss of the paraprofessional, the school assigned the physical therapist “to support the Student's physical needs within the classroom” until a paraprofessional could be secured. However, the Complainant chose to remain in the classroom to provide the needed assistance during this time. On August 20, 2001, a second paraprofessional began working in the Student's classroom. The second paraprofessional resigned on September 27, 2001, but agreed to remain until October 5, 2001. On October 3, 2001, a third paraprofessional was secured.
8. The August 14 IEP states that the student will participate in non-academic activities, but will require accommodations to participate. The complainant asserts that the Student has been kept inside during some of the recess times, and that the principal and the paraprofessional have advised her that there was no accessible equipment for the Student on the playground. The classroom teacher acknowledges that the Student has occasionally missed recess with her peers, most frequently because of toileting accidents at recess time. On at least one occasion, the Student did not go outside for recess because of work to be made up. The Student could not use the adaptive swing pending needed repairs; however, the Student

continued to participate in recess with her peers. Entries in the paraprofessional's log on September 20 and 25, 2001, indicate that options for the Student during recess were discussed and included walking and books. It was subsequently decided that the Student would use a special cushion to enable her to sit on the concrete, and the paraprofessional would also walk the Student during recess. The principal asked the Complainant to return the bronco walker to school so the Student could have the bronco walker outside during recess. The Complainant declined.

9. The complainant asserts that a schedule for providing the occupational therapy services to the Student has not been arranged, but rather the services are provided at different times from week to week. Page 5 of the August 14, 2001, IEP, indicates that the Student is to receive two 30-minute sessions weekly with service beginning on or about August 15, 2001. The IEP does not require these services to be provided at a specific time during the day or on a specific day. The director acknowledges that the Student was provided with only 85 minutes of the total 120 possible minutes of occupational therapy services during the first two weeks of the school due to conflicts in the occupational therapist's schedule. However, the school has attempted to arrange compensatory services for these missed minutes, but has encountered difficulty due to the Student's frequent absences from school.
10. On August 30 and October 5, 2001, the Complainant submitted a written request for a case conference committee meeting, and verbally requested a case conference on September 11, 2001. The Principal sent the Complainant a letter, dated August 30, 2001, stating that he could not attend a case conference on August 31, 2001, but offered September 6, 7, or 10, 2001, as available dates for a case conference. The Complainant was in California on September 6 and 7, 2001 and not available on September 10, 2001. In the principal's letter of August 30 he also indicated that he needed the complainant to submit a list of issues to be discussed, so he could decide who should attend. In a letter from the principal to the complainant, dated September 17, 2001, the principal indicated that the school was not in a position to reconvene the CCC because the Physical Therapy evaluation had not been completed and that the Student had only been in attendance 14 days. The letter included the following statement as well, "We will schedule a case conference once we get the physical therapy evaluation completed and have outline changes we feel should be considered by the case conference committee". The August 14, 2001 CCC/IEP Summary indicates that the CCC will reconvene in 6 weeks to make further additions and changes as necessary, which would have been September 25, 2001, however the school did not convene the CCC. The school sent a notice of CCC to the complainant on October 17, 2001, which the parent signed, added a statement that she had items to be added to the agenda, and returned the notice to the school. On October 24, 2001 the principal sent a letter to the complainant, which stated, " the meeting will focus on Section 300.347 the Federal IDEA statute". The letter also indicated that the agenda would be the Student's current level of performance, review and revisions of goals and objectives, special education and related services necessary for the Student to obtain the goals, and modifications that may be needed for state and district-wide assessments. The summary of the agenda did not include the discussion of the complainant's concerns. A case conference was convened on October 30, 2001. Due to insufficient time to develop the IEP, the case conference committee was reconvened on October 31 and November 7, 2001. The Complainant and the Student were out of the country from November 16 through December 15, 2001.
11. On November 7, 2001, the Complainant requested a copy of the IEP drafted at the November 7 case conference committee meeting. The Complainant received the IEP on November 14, 2001
12. The Complainant asserts that there is not a trained paraprofessional substitute in the event of an emergency or if the classroom paraprofessional cannot come to work. The IEP dated August 14, 2001, does not address the need for a substitute paraprofessional. The Complainant received a letter from the VI teacher dated May 31, 2001, stating two paraprofessionals would be trained to meet the Student's needs. One would be assigned to work with the student, and the other trained paraprofessional would be available as a substitute. The principal stated that a special education paraprofessional already placed in the building

would be with the Student should the regular paraprofessional be absent. The special education paraprofessional has received training in the safety aspects of working with the Student.

13. Subsequent to the November 7 case conference committee meeting, the Complainant determined she wished to submit a written opinion to the IEP. The Complainant received a copy of the IEP on November 14, 2001. The Complainant asserts she was advised by the principal that her written opinion would be due within five days of the delivery of the IEP to the Complainant. The Director states that the Complainant asked about a timeline for submitting a written opinion during the case conference on November 7, 2001, but no indication was made to the Complainant that a written opinion was to be submitted within five days. The principal stated that the School usually requests to have the written opinion within 10 days of the parent's receipt of the IEP. The Complainant received the IEP on November 14, 2001, and did not have time to submit a written opinion prior to her leaving the country on November 16, 2001. The school has not precluded the Complainant from submitting her written opinion at a later date.
14. The Complainant alleges she did not receive prior notification of a case conference committee meeting and received notice less than 24 hours before the conference was scheduled. The School states that the TOR e-mailed the Complainant, who was out of state, on June 1, 2001, indicating "it would be helpful for us to have a case conference on the 13<sup>th</sup> or 14<sup>th</sup> of August." Verbal confirmation of the August 14, 2001, date was made during a telephone conversation between the TOR and the Complainant on August 13, 2001. The school states that the Complainant received a Notice of Case Conference on August 13, 2001, when enrolling the Student in school; however, the complainant states that she received the written notification of the August 14, 2001 CCC meeting, when she arrived at CCC meeting. The School sent a Notice of Case Conference along with a cover letter dated October 17, 2001, informing the Complainant that a case conference had been scheduled for October 30, 2001. The Complainant returned the signed Notice of Case Conference to the School indicating that she would attend the case conference. A letter dated October 24, 2001, was sent to the Complainant, including a draft copy of the IEP, and issues to be discussed at the October 30, 2001, case conference.
15. The complainant asserts that an IEP prepared by the principal was read at the case conference on August 14, 2001. No summary of the case conference committee meeting was completed to describe any discussion that took place. The director stated that the CCC participants were informed at the beginning of the meeting that a draft IEP had been prepared "for further discussion and/or amendment." The complainant asserts she was not provided with the draft IEP during the CCC and therefore she could not fully participate in the CCC. The principal stated that comments were written on the IEP during discussion on August 14, 2001, and included in the amended IEP.
16. The Complainant asserts she is entitled to reimbursement for her work with the Student in the classroom when the School had no paraprofessional available. The Complainant was in the classroom from August 15 through August 24, 2001. The Student's IEP did not require the Complainant's presence in the classroom during this time, nor did the School request the Complainant provide any services.
17. The School requested a copy of the Student's vision report which the Complainant provided at her expense. The School reimbursed the Complainant on November 29, 2001. The Complainant acknowledged receipt of the reimbursement.
18. The Complainant states that a new playground was installed in October 2001, but was not accessible to the Student. The director stated the Complainant was asked to return the bronco walker she had removed from school which would allow the Student independence with peers on the playground. A swing that could be used by the Student was ordered and delivered; however, the swing was sized for an adult rather than a child. An additional adapted swing has been delivered to the School for the Student's use and was available upon the Student's return from Europe on December 15, 2001. The swing is brought in at the end

of the day to protect it from the weather and is only put up when the Student is at school and when the weather permits outdoor recess time.

19. The Complainant states that access to the handicapped parking space is difficult because of other cars picking up or dropping off students. The driveway is constructed in the shape of a horseshoe. The Complainant has to wait in a line of cars until she is able to access the handicapped parking space. The congested traffic has caused the Student, on occasion, to be late getting to school in the morning and leaving school in the afternoon. The principal reported the Student is now riding the bus to and from school. On the days the Student leaves school early for therapy, traffic is not a problem.

## CONCLUSIONS:

1. Finding of Fact #2 reflects that the Student's TOR informed the Student's classroom teacher of her responsibilities in implementing the Student's IEP and worked with the classroom teacher to ensure that modifications, accommodations, and other supplementary supports were provided in accordance with the Student's IEP. Therefore, no violation of 511 IAC 7-27-7(b) or 511 IAC 7-17-72 is found.
2. Finding of Fact #3 demonstrates that the School has provided the parent with the opportunity to review and inspect the Student's educational record. There is no requirement in Article 7 that the parent be provided with a copy of the educational record except in limited circumstances, none of which have been alleged in this complaint. Therefore, no violation of 511 IAC 7-23-1(f) is found.
- 3a. Finding of Fact #4 indicates that the School purchased adaptive equipment from the Student's previous school after the Complainant had made arrangements for the equipment to be transported to Indiana. As the result of a disagreement between the Complainant and the School regarding reimbursement for shipping costs, the Complainant has not allowed the School access to all of the equipment. In the interim, the School provided alternative positioning and mobility equipment for use of the student as needed, as required by the Student's IEP. Therefore, no violation of 511 IAC 7-27-7(a) is found.
- b. Finding of Fact #5 establishes that the Student's IEP dated August 14, 2001, indicates that the student is to receive 30 minutes per week of direct Vision services. The TOR's service delivery report dated August 2001 to December 2001 submitted with the school's response dated December 6, 2001 states that the VI teacher/TOR is to provide the student with 30 minutes of direct vision services per week. Although the VI teacher/TOR began providing consultation services to the Student on August 17, 2001, she did not begin providing direct services to the Student until August 28, 2001. Therefore, a violation of 511 IAC 7-27-7(a) is found.
- c. Finding of Fact #6 indicates that the Student used personal materials until the Complainant removed some of the personal materials on August 31, 2001, at which time the school provided alternative materials to meet the Student's needs until the specific items were replaced on October 8, 2001, with the exception of one backordered item that was available several weeks later. However, the school failed to provide the specific items identified in the Student's IEP between August 31, 2001 and October 8, 2001. Therefore, a violation of 511 IAC 7-27-7(a) is found.
- d. Finding of Fact #7 reflects that the Student's IEP does not require the provision of either a one-to-one paraprofessional or a classroom paraprofessional. Therefore, no violation of 511 IAC 7-27-7(a) is found.
- e. Finding of Fact #8 indicates that the Student did miss some recess time due to toileting accidents and incomplete homework. The Finding also indicates that the accessible swing that the Student utilized

during recess was broken; however, the Student did continue to participate in recess with the other students. Therefore, no violation of 511 IAC 7-27-7(a) is found.

- f. Finding of Fact #9 reflects that the IEP dated August 14, 2001, states that the occupational therapy services will be provided to the Student for two thirty minute sessions twice each week. It does not specify when during the day or at what time during the day the therapy will be provided. The Student is not entitled to compensatory services when the interruption in services is due to the Student's absence. The director acknowledges that the Student is owed some compensatory therapy time as the result of scheduling conflicts at the beginning of the school year. There is no violation during the interruption of services due to the Student's absences, however a violation of 511 IAC 7-27-7(a) is found with respect to the OT lost at the beginning of the school year.
4. Finding of Fact #10 establishes that the School failed to schedule a case conference committee meeting upon the parent's request. The school's letter of August 30, 2001, advised the parent that scheduling a CCC meeting was contingent upon the parent's submission of a list of items to be discussed at the CCC meeting. Although the school may inquire about issues the parent wishes to discuss, it may not refuse to schedule a CCC if the parent fails to identify specific issues. The School's letter of September 17, 2001, advised the parent that convening the CCC was contingent upon the completion of the PT evaluation, as well as the school's determination of what needs to be considered by the CCC. However, the parent's request for a CCC was concerning general issues, not specific to the PT evaluation. The CCC based on the school's agenda was conducted on October 30, 2001, two months after the complaint's written request for a CCC. Therefore, a violation of 511 IAC 7-27-4(a)(3) is found.
5. Finding of Fact #10 reflects that a CCC convened on October 30, 2001, but due to lack of time to complete all activities, the meeting was adjourned and reconvened on October 31, 2001 and November 7, 2001. A single CCC report resulted from this multi-day CCC meeting. Finding of Fact #11 indicates that the Complainant requested to receive a copy of the November 7, 2001, IEP before November 14, 2001. The IEP was provided to the Complainant on November 14, 2001, within 10 business days of the case conference meeting. Therefore, no violation of 511 IAC 7-27-4(a)(3) is found.
6. Finding of Fact #12 reflects that a trained paraprofessional is available to substitute in the classroom in the event the regular paraprofessional is absent. Nevertheless, Finding of Fact #7 indicates that the Student's IEP does not require a paraprofessional in the classroom. Therefore, no violation of 511 IAC 7-21-2(c) is found.
7. Finding of Fact #13 indicates that the Complainant wanted to attach a written opinion to the November 7, 2001, IEP, before leaving for a trip abroad. Although there is some indication that the School imposed a timeline for the Complainant to submit the written opinion, the School has not precluded such submission. Therefore, no violation of 511 IAC 7-27-5(a) is found. However, as Article 7 does not impose a time limit for attaching a written opinion, the school should stop any practice of telling parents a written opinion must be submitted within a certain time frame.
8. Finding of Fact #14 reflects that the Complainant did received adequate notice on October 17, 2001 for the October 30, 2001 CCC meeting. However, there is a discrepancy pertaining to whether the Complainant received the written CCC notification for the August 14, 2001 meeting on August 13, 2001 or August 14, 2001. Regardless of whether written notification was received on August 13, 2001 or August 14, 2001, neither is considered adequate notice for the August 14, 2001 CCC meeting. Therefore, violations of 511 IAC 7-27-2(c) and 511 IAC 7-17-3 are found.
9. Finding of Fact #15 indicates that the principal presented a prepared IEP to the CCC with an explanation that it was a draft IEP. Comments were noted on the draft IEP from the CCC discussion, and

incorporated into the amended IEP. Therefore, no violation of 511 IAC 7-27-4(c) is found. However, if a draft IEP is presented at a CCC meeting, then a copy should be provided to the parent to follow along.

10. Finding of Fact #16 establishes that the Complainant volunteered in the Student's classroom from August 15 through August 24, 2001. The Complainant is not entitled to reimbursement for such services, as they were not required by the IEP. Finding of Fact #17 reflects the Complainant has been reimbursed for a vision report requested by the School. Therefore, no violations of 511 IAC 7-18-2 and 511 IAC 7-17-36 are found.
11. Finding of Fact #18 indicates that the only playground equipment potentially accessible to the Student is a swing. Two swings were ordered; one was too large for the Student. Therefore, a violation of 511 IAC 7-27-9(b) is found.
12. Finding of Fact #19 reflects that the School has handicapped parking available. Although traffic congestion resulting from other students being dropped off has sometimes delayed the Complainant's access to the handicapped parking space, the space is available. It is the Complainant's responsibility to take into account the traffic flow and delays to assure that the student arrives at school on a timely manner when transporting the Student. Therefore, no violation of 28 CFR 35.150(a) is found.

**The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.**

#### **CORRECTIVE ACTION:**

The Richmond Community Schools shall:

1. The original Corrective Action identified as number "1" has been rescinded.
2. Provide the Student with 35 minutes of occupational therapy, in addition to the therapy required by the Student's IEP. The compensatory therapy shall be completed no later than April 27, 2002. Documentation that the therapy was provided shall be submitted to the Division no later than May 4, 2002.
3. Convene the case conference committee to determine if compensatory services are needed to:
  - a. address the interruption in direct service delivery from the VI teacher/TOR for the first two weeks of school:
  - b. address the lack of the IEP specified adapted materials from August 31, 2001 to October 8, 2001; andto address any outstanding IEP related issues the parent may have. A copy of the CCC Report/IEP shall be submitted to the Division no later than April 18, 2002 and shall document the CCC's consideration of these issues
4. The original Corrective Action identified as number "4" has been rescinded.
5. Immediately install the swing for the Student's use. Submit an assurance statement that the swing has been installed to the Division no later than April 2, 2002.
6. Submit an assurance statement to the Division by April 2, 2002, indicating that the school will



provide parents with written notice of a CCC meeting sufficiently in advance of the scheduled meeting to allow a change in time or location, to make arrangements to attend a meeting, or to allow a response prior to the proposed action.

7. Submit an assurance statement to the Division by April 2, 2002, indicating that the school will convene within a timely manner a CCC upon a parent's request.